

EXHIBIT "D"

(TRANSCRIPT FROM BENCH RULING IN *ENRON*)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

ENRON CORP., ET AL.,

Case No.

01-16034

Debtor.

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April 11, 2002

2:00 p.m.

United States Custom House
One Bowling Green
New York, New York

B E F O R E:

HON. ARTHUR J. GONZALEZ, U.S. BANKRUPTCY JUDGE

Ruling in reference to: One, the schedules; two,
exclusivity; and three, the D&O insurance issue

Reported by:

Linda D. Noto, RPR, CSR

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1 ENRON CORP., ET AL.,

2 THE COURT: Please be seated.

3 All right. My recollection, if I

4 left something out I'll have to go back in and get
5 some more papers, but my recollection is that
6 there are three decisions I have to read into the
7 record: One, the schedules; two, exclusivity; and
8 three, the D&O insurance issue.

9 Was there anything else that I
10 reserved on this morning?

11 All right. I'll deal first with
12 exclusivity and then I'll read a decision with
13 respect to the D&O. And when I deal with
14 exclusivity, I'll deal as well with the schedules.

15 Cause exists to extend the Debtors
16 exclusive periods as to all the Debtors.

17 With respect to ENA, the Court will
18 do the following: One, extend ENA's exclusive
19 period to August 31st, 2002; two, sua sponte
20 expand the ENA Examiner's role to that of the
21 facilitator of a plan in the ENA case and direct
22 him to file a report regarding the status of those
23 efforts including a recommendation as to any
24 further extension of ENA's exclusivity; three,
25 such report shall be filed on or before July 26,

1 ENRON CORP., ET AL.,

2 2002.

3 With respect to the other Enron
4 Debtors, the exclusive period is extended as
5 requested by the Debtor and the Committee for the
6 six-month period sought.

7 With respect to the schedules, the
8 Court grants the Debtors' request for the
9 additional 60 days and the related relief sought.
10 And the Debtor is to serve an order with respect
11 to both of those issues, and obviously settle it
12 upon the ENA Examiner with respect to the
13 exclusivity issue.

14 Regarding the AEGIS motion and the
15 outside directors. Concerning the motions filed
16 by AEGIS and the outside directors to lift the
17 automatic stay to allow AEGIS to pay amounts under
18 the AEGIS D&O Policy and the AEGIS Fiduciary and
19 Employee Benefit Liability Policy, first, as set
20 forth by the Movants, their motion to lift the
21 stay is the procedurally correct method to have
22 this matter presented to the Court.

23 Therefore, currently at issue is
24 the payment of the defense costs incurred by the
25 officers and directors.

1 ENRON CORP., ET AL.,

2 The D&O Policy provides for

3 coverage of the directors and officers,

4 indemnification coverage for the Debtor, and

5 entity coverage for the Debtor.

6 Pursuant to the terms of the D&O

7 Policy, the directors have a right to advancement

8 of defense costs under a priority of payments

9 endorsement.

10 The Debtors' entity coverage and

11 its indemnification coverage are expressly

12 subordinated to the rights of the directors and

13 officers under the AEGIS D&O policy.

14 As the Debtors' property rights are

15 defined by state law, it is that law that governs

16 the contractual obligation; thus, any directors

17 and officers currently due defense costs covered

18 by the policy must be paid from the proceeds of

19 the policy first. The Debtors are then entitled

20 to have their own claims for defense costs paid.

21 The Debtors note the importance of

22 providing the officers and directors with this

23 type of coverage. The Debtors assert that the

24 Debtor, itself, is entitled to currently-due

25 defense costs and will seek payment once the

1 ENRON CORP., ET AL.,
2 directors and officers receive payments for the
3 amounts currently due them.

4 With respect to the payment of
5 officers and directors' defense costs, to the
6 extent that any such payments would negatively
7 impact the Debtors' interest in the proceeds of
8 the D&O policy, that result is dictated by the
9 negotiated terms of the policy.

10 As certain officers and directors
11 may have present rights to payment of defense
12 costs, the fact that certain parties may in the
13 future assert claims and potentially become
14 entitled to payment from the insurance policies
15 does not preclude those who are currently entitled
16 to payment from receiving it.

17 In any case, the parties are bound
18 by the contractual provisions of the policy. The
19 Debtors' interest in the policy is limited by its
20 contractual provisions including a priority
21 advancement and payment obligations contained in
22 those policies. The Court cannot rewrite the
23 provisions of the contract.

24 The Objectants acknowledge the
25 terms of the contract. Some of the Objectants

1 ENRON CORP., ET AL.,
2 argue that because AEGIS and the outside directors
3 are seeking to invoke this Court's jurisdiction
4 concerning the lifting of the stay, that gives
5 this Court leeway to set conditions upon which the
6 stay would be lifted. However, in this case, any
7 such action would result in changing the terms of
8 the contract.

9 The Court finds that, while
10 exercising jurisdiction concerning the issue of
11 lifting the stay, it should not exercise
12 jurisdiction over the terms of the contract and
13 will not interfere with those terms.

14 Under the AEGIS Fiduciary Policy,
15 the coverage afforded the relevant Debtors is
16 co-extensive with the coverage afforded the
17 individual insureds. However, that policy
18 provides a special \$10 million fund earmarked for
19 defense costs.

20 Payment from that fund will protect
21 the coverage that is available for payment of
22 settlements and judgements. Moreover, payment
23 from the special funds requires written approval
24 from the Debtor. These two aspects protect the
25 Debtors' interest.

1 ENRON CORP., ET AL.,

2 In addition, the Debtors have
3 referenced the estates' interest in having
4 individual defendants vigorously defend themselves
5 in light of the potential for vicarious liability.

6 The Debtors also have asserted that
7 the payment of the individual claimants' defense
8 cost from the special \$10 million fund should not
9 limit the availability of proceeds that may be
10 required by the Debtor.

11 Based upon the pleadings filed and
12 the record of this hearing, the Court finds that
13 because of the entity coverage, the stay is
14 implicated. However, the Debtors' interest appear
15 minimal.

16 Moreover, the Debtors' interest
17 should not be expanded by this Court. They should
18 receive no greater protection than their contract
19 rights afford them.

20 The Court finds cause to lift the
21 stay and grant the motion to permit the parties to
22 exercise their contractual rights under the D&O
23 Policy.

24 In addition, the Court grants the
25 motion to lift the automatic stay to the extent

1 ENRON CORP., ET AL.,
2 that the individual insureds and the Debtors may
3 exercise their contractual rights against the
4 \$10 million special fund portion of the Fiduciary
5 Policy.

6 The Movants shall settle an order
7 upon the appropriate parties.

8 We will begin again, I think, at
9 2:30. Thank you.

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11 (Time noted: 2:05 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, LINDA D. NOTO, a Certified
Shorthand Reporter, Registered
Professional Reporter and Notary Public
within and for the State of New York, do
hereby certify:

I reported the proceedings in the
within entitled matter, and that the
within transcript is a true record of
such proceedings.

I further certify that I am not
related, by blood or marriage, to any of
the parties in this matter and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 11th day of April, 2002.

Linda D. Noto

LINDA D. NOTO, C.S.R., R.P.R.

License Number XI 01887 - N.J.

License Number 001002 - N.Y.